

REMARKS

Entry of the foregoing, reexamination, and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.112, is respectfully requested.

I. Amendments to the Claims

By the foregoing amendment, claims 1, 3-20, 26, and 27 have been amended, and claim 2 has been canceled.

In particular, claim 1 has been amended to recite that the peptide component of the tumor targeting unit consists of not more than 7 amino acids. This amendment is supported at least at page 6, lines 32-35 (stating that "small" peptides are preferred) and page 18, lines 15-19 of the specification (indicating that peptides comprising a "tumor targeting motif" (3 amino acids long) and "up to four additional residues" are especially preferred).

Claim 1 has been further amended to recite "cyclic peptides" rather than peptides that are "capable of forming a cyclic structure." This amendment is supported throughout the specification and claims as filed. For example, the specification teaches that cyclic peptides are preferred (*see, e.g.*, page 6, lines 32-35 and page 19, lines 15-20), and original claim 2 recites cyclic peptides.

Other amendments to the claims have been made to clarify the claim language and bring the claims into better conformance with U.S. patent practice. These amendments are merely editorial in nature and are not intended to change the scope of the claims or any elements recited therein.

The amendments to the claims, including cancellation of claims, have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants

reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of the foregoing amendments of the above-identified application are respectfully requested.

II. Response to Claim Rejection Under 35 U.S.C. § 112, Second Paragraph

At page 2 of the Office Action, claims 1 and 6-9 have been rejected under 35 U.S.C. § 112, second paragraph, as purportedly being indefinite.

Specifically, the Examiner has stated that it is not clear what a "tumor targeting unit" is.

In response, Applicants have amended the claims to recite "a compound comprising a tumor targeting unit," as suggested by the Examiner.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

III. Response to Claim Rejections under 35 U.S.C. § 102

A. At pages 3-4 of the Office Action, claims 1, 6, and 7 have been rejected under 35 U.S.C. § 102(b), as purportedly anticipated by Eto (J. Biol. Chem. 275, 27075-83, 2000).

B. At pages 4-5 of the Office Action, claims 1 and 6 have been rejected under 35 U.S.C. § 102(b), as purportedly anticipated by Ruoslahti (U.S. Patent No. 5,622,699).

C. At pages 5-6 of the Office Action, claims 1 and 6 have been rejected under 35 U.S.C. § 102(e), as purportedly anticipated by Roberts (U.S. Pub. No. 2003/0148368).

Specifically, the Examiner has stated that the references disclose various peptide sequences that fall within the scope of the present claims. The Examiner has further

indicated that any peptide "is capable of forming a cyclic structure," for example via a linker or via a thioester bond. These rejections are respectfully traversed.

It is well established that for prior art to be anticipatory, every element of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *See, e.g., Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 213 U.S.P.Q. 81, 90 (Fed. Cir. 1986). Applicants submit that the cited reference fails to satisfy this requirement, for at least the following reasons.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, claim 1, as noted above, has been amended to recite that the tumor targeting unit comprises a peptide that consists of not more than seven amino acids, and that is a cyclic peptide. Applicants submit that the cited references do not teach or even suggest cyclic peptides of not more than seven amino acids as recited in claim 1.

Since each and every element of Applicant's claimed invention is not taught in any of the references cited by the Examiner, each of the references fails to anticipate the claims of the present application. Accordingly, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 102 rejections.

CONCLUSION


In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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